

FCC MAIL SECTION

May 9 9 22 AM '96  
 Federal Communications Commission  
 Washington, D.C. 20554

DISP

MM Docket No. 94-156

In the Matter of

Amendment of Section 73.202(b) RM-8564  
 Table of Allotments,  
 FM Broadcast Stations.  
 (Hawesville, Kentucky and  
 Tell City, Indiana)

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: April 24, 1996;

Released: May 3, 1996

By the Chief, Allocations Branch:

1. At the request of WLME, Inc. ("petitioner"), licensee of Station WKCM-FM, Channel 289A, Hawesville, Kentucky, the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 28 (1995), proposing the substitution of Channel 246A for Channel 289A at Hawesville, and the modification of Station WKCM-FM's license accordingly. To accommodate the allotment, petitioner also proposes the substitution of Channel 289A for Channel 245A at Tell City, Indiana, and the modification of Station WXSC(FM)'s construction permit accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. Opposing comments were filed by Carmi Broadcasting Company ("CBC"), licensee of Station WRUL(FM), Channel 247B, Carmi, Illinois.

2. In support of its proposal, petitioner states that the proposed Class A channel substitution will enable Station to increase its facilities to six kilowatts at its presently licensed site. Petitioner also states that Carolyn S. Hagedorn, permittee of Station WXSC(FM), Channel 245A, Tell City, Indiana, has consented to a change of frequency to accommodate the Hawesville channel substitution.

3. In its opposing comments, CBC claims that the proposed substitution of Channel 246A for Channel 289A at Hawesville will cause signal interference to Station WRUL(FM), Channel 247B, Carmi, Illinois. CBS also

claims that the channel change will impact on the Evansville, Indiana, market area advertisers. Conversely, our engineering analysis has determined that the petitioner's transmitter site (37-55-33 and 86-43-19) for Channel 246A at Hawesville is fully-spaced to the transmitter site (38-04-54 and 88-12-04) for Station WRUL(FM), and would not cause harmful signal interference. Section 73.207(b)(1) of the Commission's Rules stipulates a minimum distance separation of at least 113 kilometers (70 miles) for first adjacent Class A and Class B allotments. The Carmi transmitter site is located 131.1 kilometers (81.5 miles) from the Hawesville transmitter site, a distance of 18.1 kilometers (11.2 miles) more than required by the Commission's Rules. Therefore, we find CBC's argument that the channel substitution at Hawesville will cause signal interference to Station WRUL(FM) is unfounded.

4. Based on the information before us, we believe the public interest would be served by the substitution of Channel 246A for Channel 289A at Hawesville, Kentucky, since it would allow Station WKCM-FM to provide the community with an improved FM transmission service. An engineering analysis has determined that Channel 246A can be substituted at Hawesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.7 kilometers (2.3 miles) north-east at petitioner's presently licensed site.<sup>1</sup> To accommodate the Hawesville substitution, Channel 289A can be substituted for vacant Channel 245A at Tell City, Indiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) south in order to avoid short-spacings to the licensed sites of Station WASE(FM), Channel 288A, Fort Knox, Kentucky, and Station WUZR(FM), Channel 289A, Bicknell, Indiana.<sup>2</sup> We shall also modify Station WKCM-FM's license to specify operation on Channel 246A in lieu of Channel 289A at Hawesville, Kentucky. Pursuant to petitioner's request, the procedures outlined in *Modification of FM & TV Station Licenses*, 98 FCC 2d 916 (1984), and Section 1.420(g) of the Commission's Rules, do not apply in this case since no upgrade in facilities is contemplated. We believe Channel 246A is equivalent to Channel 289A for allotment purposes. Therefore, we consider channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or air hazards. See *Vero Beach, Florida*, 3 FCC Rcd 1049 (1988), *rev denied*, 4 FCC Rcd 2184, 2185 (1989).

5. CBC's argument that the proposed channel substitution would impact on its Evansville, Indiana, market area advertisers raises issues which the Commission has already determined are not relevant in either a licensing or allotment context. See *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3

<sup>1</sup> The coordinates for Channel 246A at Hawesville are North Latitude 37-55-33 and West Longitude 86-43-19.

<sup>2</sup> The modified reference coordinates for vacant Channel 289A at Tell City are North Latitude 37-50-49 and West Longitude 86-43-27. Generally, we do not change reference coordinates for vacant allotments in the course of a rule making proceeding in the absence of other changes in the Table of Allotments or to entertain rule making petitions solely to change reference coordinates. See, e.g., *Grenada, Mississippi*, 7 FCC Rcd 4838 (1992). Consistent with that policy, we find that the instant proceeding does not present the policy concerns of protecting the integrity of the Table of Allotments since the Tell City channel substitution

and the modified reference coordinates are necessary to accommodate the Hawesville proposal which will enable Station WKCM-FM to increase its facilities to six kilowatts and improve its FM transmission service. Moreover, the site restriction imposed for the vacant and unapplied-for channel conforms with the well-established Commission policy of allotting channels with the least site restriction possible, thereby affording prospective applicants with the greatest flexibility in selecting transmitter sites, thus aiding in the activation of new stations. See *Vacaville, California*, 4 FCC Rcd 8315 (1989), *recon. den.*, 6 FCC Rcd 143 (1991).

FCC Rcd 638 (1988), *recon. denied*, 4 FCC Rcd 2276 (1989); *Cheyenne, Wyoming*, 8 FCC Rcd 4473 (1993). Consequently, there is no basis under the current state of Commission precedent for consideration of those issues. In an related context, there is no Commission requirement for WLME, Inc. or any other party to demonstrate a "demand" or need for an allotment aside from the already stated willingness of petitioner to apply for Channel 246A at Hawesville and construct the proposed facilities.

6. As stated in the *Notice*, in recognition of the Commission's policy concerning the involuntary relocation of an authorized transmitter site, WLME, Inc. submitted an agreement with Carolyn S. Hagedorn, permittee of Station WXSC(FM), consenting to the change in her transmitter site, as well as the proposed change in channel of operation to accommodate the modification of Station WKCM-FM's license. Petitioner also stated its willingness to reimburse the permittee of Station WXSC(FM) for reasonable expenses incurred in relocating to Channel 289A. However, in light of the fact that Station WXSC(FM)'s construction permit for Channel 245A at Tell City, Indiana, has been forfeited and cancelled, and its Application for Review of the Commission's denial of its request for extension of time in which to build its Class A facilities has also recently been denied, the channel is now vacant and unapplied-for.<sup>3</sup> Therefore, the reimbursement requirements pursuant to *Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967), are no longer applicable. We will serve Ms. Hagedorn with a copy of this *Report and Order*.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 17, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Hawesville, Kentucky	246A
Tell City, Indiana	289A

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of WLME, Inc., for Station WKCM-FM, Hawesville, Kentucky, IS MODIFIED to specify operation on Channel 246A in lieu of Channel 289A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WKCM-FM's license, BLH-930528KD, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all

respects with license BLH-930528KD, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following:

WLME, Inc.  
P.O. Box 150846  
Nashville, Tennessee 37215  
(Licensee of Station WKCM-FM)

Carolyn S. Hagedorn  
Bradley & McCulloch, P.A.  
5100 Indian School Road, N.E.  
P.O. Box 26447  
Albuquerque, New Mexico  
87125-6447

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>3</sup> On January 23, 1992, Carolyn S. Hagedorn, permittee of Station WXSC(FM), filed for an extension of her construction permit (File No. BMPH-920123JP) for Channel 245A at Tell City, Indiana, which the Commission denied. On October 12,

1994, Ms. Hagedorn filed an Application for Review directed to the Commission's action, which on January 26, 1996, was also denied. See *MO&O*, FCC 96-29, 11 FCC Rcd 1695 (1996).